

EVAPCO TERMS AND CONDITIONS Rev.1.0

1. **CONTRACT:** As used herein, "Buyer" shall mean Evapco, Inc. or the Evapco subsidiary or affiliate that is purchasing goods, materials or services (collectively the "Goods"), and "Seller" shall mean the entity that is selling goods to Buyer. These terms and conditions (the "Terms and Conditions") are being provided with a Purchase Order (the "Order") that sets forth the price, quantity, delivery date, and description of the Goods that Buyer is purchasing from Seller. The Offer to purchase Goods set forth in the Order is expressly limited to the terms set forth in the Order and in these terms and conditions. Any additional terms, conditions or other provisions included with Seller's acceptance, or that are provided with the Goods, is automatically rejected without the need for any further communication. By providing the Goods specified in the Order, Seller is deemed to have accepted the terms set forth herein and in the Order, and the Order and these Terms and Conditions shall constitute the Contract governing the sale of such Goods. If Seller wishes to take exception to any of these terms and conditions or to any terms in the Order, it shall do so in writing prior to accepting this Order, and such additional terms shall only become part of the Contract if Buyer accepts such terms in writing.
 2. **INSPECTION, ACCEPTANCE AND REJECTION:** All Goods supplied shall be subject to Buyer's inspection. If Buyer determines that the Goods do not conform to the requirements of the Contract ("Nonconforming Goods"), Buyer may, at its option, (i) return the Nonconforming Goods to Seller and either not pay the purchase price for such goods, or recover such portion of the purchase price that Buyer has already paid, (ii) return Nonconforming Goods at Seller's expense for repair or replacement of such Nonconforming Goods at no cost to Buyer, and/or (iii) exercise any other rights Buyer may have in law or equity. Written notice of defects shall be given by Buyer or Seller within a reasonable time after delivery to Buyer.
 3. **WARRANTY:** Seller represents and warrants that all Goods it supplies to Buyer: (i) conform to applicable specifications, and/or to drawings or samples furnished by Buyer, (ii) are fit and sufficient for the intended purpose, (iii) will function properly, (iv) are free from defects in material and workmanship for a period of one (1) year from the date of shipment, (v) are provided to Buyer with good and valid title free of any liens, encumbrances, security interests or other burdens, (vi) do not infringe or violate any copyright, trademark, patent or other intellectual property right of a third party, and (vii) comply with all applicable federal and state laws and regulations. If Seller's standard express warranty for the Goods is longer or more extensive than the warranty described herein, such standard warranty shall apply. **THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE PRODUCT OR LABOR WITH REQUIREMENTS OF ANY LAW, REGULATION OR SPECIFICATION, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.**
 4. **REMEDY FOR BREACH OF WARRANTY:** If a defect is discovered in the Goods during the warranty period, Buyer may, at its option, (i) return the defective Goods to Seller at Seller's expense for a full refund of the purchase price, (ii) require Seller to repair or replace the defective Goods within ten (10) days of providing notice of such defect, (iii) repair or replace the defective Goods itself and be reimbursed in full by Seller for all costs Buyer incurs in repairing or replacing the defective Good.
 5. **INVOICE, PAYMENT and TAXES:** After delivering the Goods, Seller shall submit an invoice showing the amount Buyer is required to pay for the Goods. Unless otherwise stated in the Order, invoices shall be due net 30 days from receipt of invoice. The invoice shall not introduce any material terms or charges that differ from, or are inconsistent with the Order or the Terms and Conditions. Unless otherwise specified in the Order, all charges for packing, crafting, hauling, storage and transportation to point of delivery are included in the purchase price. Any applicable sales, use, excise, or other similar taxes, are to be itemized separately on the invoice. Seller agrees to accept any tax exemption certificates supplied by Buyer.
 6. **DELIVERY, TITLE and RISK OF LOSS:** Time is of the essence. Failure to deliver the Goods on the date and place specified in the Contract is a default. Seller shall notify Buyer of any delay to the delivery date and Buyer may elect, at its option, (i) to accept the revised delivery schedule, (ii) to require Seller to supply the goods by a different mode of transportation at Buyer's expense, (iii) cancel the Order and hold Seller responsible for any increased costs associated with purchasing Goods from another source, and/or (iv) exercise any other remedy available to Buyer at law or equity. All shipments of Goods are F.O.B. per the Purchase Order. Title and risk of loss or damage passes to Buyer only upon receipt and acceptance of such Goods by Buyer.
 7. **PACKING, MARKING and SHIPMENT:** Seller shall prepare and pack all Goods in accordance with good commercial practice so as to ensure safe delivery without damage or loss. All shipments must be accompanied by packing slips containing a description of the articles, the shipper's name, the purchase order number, and the location to which the shipment is consigned. Any expenses resulting from mis-routed shipments shall be Seller's responsibility.
 8. **CANCELLATION:** Buyer may cancel an Order in whole or in part for any of the following reasons: (i) Seller ships Nonconforming Goods, (ii) Goods are not shipped on the date scheduled, (iii) Seller makes an assignment for the benefit of creditors, or a receiver should be appointed, or if a proceeding in bankruptcy or for corporate reorganization is filed by or against Seller, (iv) Seller assigns its rights under this Contract without Buyer's prior written consent, or (v) Seller fails to comply with any of the terms of the Contract.
 9. **INDEMNITY AND LIMITATION OF LIABILITY:** Seller agrees to defend, indemnify and hold harmless Buyer, and its officers, directors, employees and agents, from and against any third party claims for bodily injury (including death), damage to tangible property, to the extent arising from Seller's negligence, gross negligence or intentional misconduct in the performance of this Agreement and/or providing goods or services hereunder. Seller shall also defend and indemnify Buyer against any claim that Seller's use of Goods supplied by Buyer infringes the intellectual property rights of a third party. Seller reserves the right to control defense and settlement of any indemnified claim.
- NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY AND EVEN IF ANY REMEDIES PROVIDED UNDER THIS AGREEMENT CONTAINING THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES. EXCEPT FOR SELLER'S THIRD PARTY INDEMNIFICATION OBLIGATIONS THAT ARE COVERED BY INSURANCE, OR SELLER'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS HEREUNDER, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT TO THE OTHER PARTY SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE GOODS. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY; PROVIDED THAT NOTHING IN THIS LIMITATION OF LIABILITY SHALL OPERATE TO REDUCE OR LIMIT INSURANCE PROCEEDS THAT MAY BE AVAILABLE FROM INSURANCE POLICIES PROCURED BY EITHER PARTY.

10. **INSURANCE:** If the accomplishment of this Order requires the performance of services, or labor on the premises of Buyer, Seller agrees to provide and maintain insurance coverage, until the work is completed and accepted by Buyer, and to furnish Certificates from its insurance carriers showing that it carries insurance in the following minimum limits: (a) Workmen's Compensation in the amount of statutory limits for the State or States in which the work is to be performed; (b) Commercial General Liability- in amounts not less than \$1,000,000 per occurrence/\$2,000,000 aggregate covering Seller's insurable obligations, operations, premises, independent contractors, products/completed operations, personal injury and advertising injury. (c) Automobile Public Liability with a combined single limit for bodily injury and property damage of not less than \$1,000,000 to include coverage for all owned, non-owned, and hired/leased/rented vehicles.
11. **ENTIRE AGREEMENT.** This Contract contains the entire agreement between the parties. This Contract is not assignable by Seller. If any provision of this Contract is found to be invalid or unenforceable in any jurisdiction then the other provisions of this Contract shall remain in full force and affect.
12. **CHOICE OF LAW/VENUE.** This Contract shall be governed by the laws of the State of Maryland without regard to principles of conflicts of laws. Any claim or suit between the parties hereto relating to or arising under or in connection with this Contract shall be brought only in, and decided by, the courts located in Maryland, such courts being a proper forum in which to adjudicate such claim or suit and Seller hereby waives any objection to each such venue, and waives any claim that such claim or suit has been brought in an inconvenient forum or that the courts of Maryland lack jurisdiction over the case or a party.